

DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, CA 95814

May 10, 1993

ALL-COUNTY LETTER NO. 93-31

TO: ALL COUNTY WELFARE DIRECTORS

REASON FOR THIS TRANSMITTAL

- ☐ State Law Change
- ☐ Federal Law or Regulation Change
- ☐ Court Order or Settlement Agreement
- ☐ Clarification Requested by One or More Counties
- ☒ Initiated by SDSS

SUBJECT: GUARDIANSHIP AND THE ADOPTIONS PROGRAM (to be used in conjunction with ACL No. 92-100)

The purpose of this All-County Letter is to address several inquiries the Department has received regarding families who have obtained legal guardianship of a child and then want to adopt the child under the adoption laws of California. This letter will also address whether adoption agencies licensed to provide only noncustodial adoption services may assist such families with adoption of the child in California.

The inquiries have raised the following issues:

1. May a California-licensed private adoption agency licensed to provide only noncustodial adoption services under California's Agency Adoptions Program act as the sole agency assisting a family to complete an adoption in California when the family has guardianship of the child to be adopted?

ANSWER: No. As defined in Health and Safety (H&S) Code Section 1502(a)(10), Civil Code (CC) Section 220.20(1), and Title 22 California Code of Regulations (CCR) Section 35000(n)(1), a noncustodial adoption agency may only:

- (a) Assess the prospective adoptive parents;
- (b) Cooperatively, with a California-licensed full-service adoption agency, match approved prospective adoptive parents with a child under the care, custody and control of a California-licensed full-service adoption agency; and
- (c) Cooperatively, with a full-service adoption agency, supervise such a placement.

A noncustodial adoption agency may not place a child for adoption or remove a child from an adoptive placement. Thus, if the family decides to petition the court to terminate the guardianship prior to the finalization of the

adoption, the noncustodial adoption agency would not have the legal authority to remove the child from the placement or assume the care, custody and control of the child. Only an agency licensed to provide full-service adoption agency services is permitted to assume this responsibility under the scope of its license.

2. May a California-licensed private adoption agency licensed to provide only noncustodial adoption services under California's Intercountry Adoptions Program assist a family who will obtain full guardianship of the foreign-born child under the laws of the child's native country prior to bringing the child to California and assist the family to adopt the child under the Adoption in California component of California's Intercountry Adoptions Program? May the same agency assist a family who has already obtained the guardianship of the foreign-born child under the laws of the child's native country to adopt the child under the Adoption in California component of California's Intercountry Adoptions Program?

ANSWER: No to both questions. See response to question number one. CC Section 226.21(b) requires that the family receiving full guardianship of the child from the child's native country must assume all responsibilities for the child including care, custody, control, and financial support. However, if the family were successful in petitioning the court of the foreign country or a United States court to terminate the guardianship prior to the finalization of the adoption, the noncustodial adoption agency would not have the legal authority to remove the child from the placement or assume the care, custody and control of the child. Since the intent of CC Section 226.21(a) and Section 226.21(b) is to avoid having foreign-born prospective adoptees become public charges, only a private agency licensed to provide full-service adoption agency services is permitted to assume this responsibility under the scope of its license.

If you have any questions about these issues, please contact the Adoptions Policy Bureau at the above address or (916) 322-4228 (ATSS 492-4228).

Marjorie Kelly

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cc: CWDA